IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12135 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VIJAYBHAI JITENDRABHAI TRIVEDI - Petitioner(s)

Versus

ADDL. SECRETARY (APPEALS) REVENUE DEPARTMENT & 7 - Respondent(s)

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Appearance :

MR RJ OZA for Petitioner(s) : 1,
MR DA DESAI ASST GOVERNMENT PLEADER for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 1 - 5, 5.2.2,5.2.3 - 8.
None for Respondent(s) : 5,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 26/09/2005

ORAL JUDGMENT

1. In this petition under Articles 226 and 227 of the Constitution of India, the petitioner has

challenged the legality and validity of the judgment and order passed by the Additional Secretary (Appeals), Revenue Department, State of Gujarat dated 28.6.2004 / 17.8.2004 passed in Revision Application No.112/88 in dismissing the said Revision Application and confirming the order passed by the Collector, Ahmedabad dated 30.3.1998 passed in RTS Revision Application No.204 of 1997 as well as the order passed by the Dy. Collector, Viramgam Prant dated 5.9.97 passed in RTS Appeal Case No. 55/97.

2. The dispute is with regard to mutation entry No.3523 made in the revenue record of village Ognaj, Taluka Daskroi, District Ahmedabad in respect of the land bearing S.No.698/4 admeasuring 4047 sq. mts. And S.No.703 admeasuring 4053 sq. mts situated at village Ognaj. The aforesaid land was owned by the respondent No.4 to 8 herein and the petitioner purchased the same by registered sale-deed dated 16.3.1993 and the name of the petitioner came to be mutated in the revenue record vide entry No.3523 on 29.6.93 and the said entry also came to be certified on 16.8.93. It appears that the said entry came to be challenged by

the respondent Nos.4 to 8 herein i.e. Seller before the Dy. Collector, Viramgam Prant, Ahmedabad being RTS Appeal No.55/97 on the ground that the petitioner is not an agriculturist and that there is breach of Prevention of Fragmentation Act by virtue of sale in favour of the petitioners. The Dy. Collector, Viramgam Prant, by its order dated 5.9.97 canceled the aforesaid entry No.3523. Being aggrieved and dissatisfied with the order passed by the Dy. Collector, Viramgam Prant dated 5.9.97 passed in RTS Appeal Ano.55/97, the petitioner preferred Revision Application before the Collector, Ahmedabad being Revision Application No.204/97 and the District Collector, Ahmedabad by its order dated 30.3.98 dismissed the said Revision Application. Being aggrieved and dissatisfied with the order passed by the District Collector, Ahmedabad dated 30.3.98 passed in Revision Application No.204/97, the petitioner preferred Revision Application before the Secretary (Appeals), Revenue Department, State of Gujarat being Revision Application No.SRD 112/98 and the Additional Secretary (Appeals), Revenue Department, State of Gujarat by its judgment and

order dated 20.6.2004/17.8.2004 dismissed the said revision application.

3. Being aggrieved and dissatisfied with the judgment and order passed by the Additional Secretary (Appeals), Revenue Department, State of Gujarat passed in Revision Application No.112 of 1998, the petitioner has preferred the present Special Civil Application under Articles 226 and 227 of the Constitution of India.

4. Shri R.J.Oza, learned advocate appearing on behalf of the petitioner has relied upon the judgment of this Court in case of ***EVERGREEN APARTMENT COOPERATIVE HOUSING SOCIETY V. SPECIAL SECRETARY, REVENUE DEPARTMENT, GUJARAT STATE, 1991 (1) GLR 113, NATHUBHAI MERAMAN DARJI V. SPECIAL SECRETARY (APPEALS) & ORS. 1996 (3) GCD 691 AND SIDDHARTHBHAI B. SHAH & ORS. V. STATE OF GUJARAT & ORS. 1999 (3) GLR 2527*** in support of his submission that the revenue authority could not have set aside the entry on the ground that there is breach of other laws.

5. He has further submitted that the Revenue Authority has no jurisdiction and/or authority to consider the legality and validity of the transaction. It is further submitted that when the petitioner has purchased the land in question by registered sale-deed, the Revenue Authorities are bound to give effect to the same in the Revenue Record.

6. Shri Dipen Desai, learned AGP has tried to support the orders passed by all the three authorities below and submitted that when the sale transaction in favour of the petitioner is illegal and the same is in breach of Prevention of Fragmentation Act, all the authorities below are justified in canceling the entry and therefore, it is requested to dismiss the present Special Civil Application.

7. It is not in dispute that the petitioner is the purchaser of the land in question by registered sale-deed. As held by this Court in the case of ***EVERGREEN APARTMENT COOPERATIVE HOUSING SOCIETY V. SPECIAL***

SECRETARY, REVENUE DEPARTMENT, GUJARAT STATE, 1991 (1) GLR 113, NATHUBHAI MERAMAN DARJI V. SPECIAL SECRETARY (APPEALS) & ORS. 1996 (3) GCD 691 AND SIDDHARTHBHAI B. SHAH & ORS. V. STATE OF GUJARAT & ORS. 1999 (3) GLR 2527, the Revenue Authorities exercising the RTS jurisdiction in the proceedings, have no jurisdiction to consider the breach of other laws. As held by this Court in case of ***Ganeshbhai Manilal Mayavanshi v. State of Gujarat & ors. (2005) 9 GHJ. 634***, the Revenue Authorities is bound to give effect to the registered sale-deed in the revenue record. However, if the said authority is of the opinion that there is breach of any other law then, the same should be noted vide additional entry and the same should be referred to the Competent Authority for initiation of the proceedings. In view of the above judgment the impugned order passed by the authorities below canceling entry No.3523 deserves to be quashed and set aside and the same are hereby quashed and set aside. Entry No.3523 with respect to the land in question is restored, however, it is further directed to the Revenue Authority that an additional entry be made in the revenue record

that as per the authority the same is in breach of provisions of Prevention of Fragmentation Act and/or Bombay Tenancy Act and it will be open for the appropriate authority to initiate the proceedings under the provisions of Bombay Prevention of Fragmentation Act and/or under the provisions of the Bombay Tenancy Act and/or under any other law of which the breach is alleged.

8. Rule is made absolute to the aforesaid extent, however, there will be no order as to costs.

(M.R.SHAH, J.)

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